BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6372 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

JOSEPH A. NIETO
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-209

FORMERLY
BENEFIT DECISION
No. 6372

SSA No.

DE FALCO'S MARKET CO., INC.
(Employer-Appellant)
c/o C. L. Belden & Associates

Account No.

Referee's Decision
No. LA-11583

STATEMENT OF FACTS

The employer appealed from the decision of a referee which held that the claimant was discharged from his work under circumstances which did not constitute misconduct under Section 1256 of the code and that the employer's account was subject to benefit charges under Section 1032 of the code. Written argument in the matter has been submitted on behalf of the employer.

The claimant was last employed for a period of approximately one month until December 31, 1954 as a baker's helper by the above-named employer. At the time the claimant became employed by the employer herein, he was hired to work a six-day week, Monday through Saturday. Shortly thereafter, through negotiations with the bakery workers' union, a five-day work week was established. This action required the employer to alter his workers' shifts and necessitated the services of a baker's helper on Sunday.

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When informed by the employer that he would be required to work on Sundays, the claimant refused. The claimant was motivated for his refusal to work on Sundays by the fact that he had three minor children with whom he wished to go to church and spend the rest of each Sunday as they were in school through the week and he felt that he could not spend the proper amount of time with them if he worked on Sunday. The employer thereupon discharged the claimant and secured the services of another employee who would work on Sundays.

Effective January 2, 1955, the claimant filed an additional claim for unemployment insurance benefits within a benefit year which began March 21, 1954. On April 11, 1955, the Department of Employment issued a determination under Section 1256 of the code which held that the claimant had been discharged from his most recent employment for reasons other than misconduct. The department also issued a similar ruling to the employer under Section 1032 of the code. The employer appealed to a referee who affirmed the department's determination and ruling. The employer then appealed to the Appeals Board.

The issues to be decided in this matter are:

1. Was the claimant discharged from his employment or must it be held that by his actions he voluntarily left his work?

2. (a) If the claimant was discharged, was it because of misconduct connected with his work?

(b) If the claimant voluntarily left his work, did he do so with good cause?

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides in pertinent part as follows:

"1256. An individual is disqualified for unemployment compensation benefits if the director finds that he left his most recent work voluntarily without good cause or that he has been discharged for misconduct connected with his most recent work."

We have held in Benefit Decision No. 4847 that a worker who refuses to obey a reasonable order from a superior may expect that such refusal will result in his dismissal and that the worker's action constitutes a voluntary leaving of work without good cause.

In Benefit Decision No. 5054, we also considered a situation wherein a worker, upon being laid off when the particular department in which she had been performing services was discontinued, refused an offer of a transfer to similar work in a different department in a store in which she was employed. The claimant's ground for refusal therein was that it would have required her to work on Sundays and she wished to be with her family on that day. We concluded in such decision that the claimant refused an offer of suitable work without good cause. In arriving at such conclusion, we stated in part:

> ". . . her testimony clearly shows that she refused the offer simply because it would have interfered with her desire to be with her husband and child as much as possible. The claimant's filial devotion in this respect is commendable and her reason for not accepting the offer is unquestionably important to her. However, on the other hand it was no more compelling than a personal preference without any compelling circumstances that would have rendered her unable to accept the employment. The work offered was suitable and it follows from our conclusions expressed herein that the refusal of such work was without good cause on the part of the claimant. . . ."

In Benefit Decision No. 5952, the claimant was given the opportunity to transfer to other employment with the same employer but refused to do so and was discharged when he refused to resign. We reviewed Benefit Decisions Nos. 5483 and 5512 and held that the claimant had, in effect, resigned, our decision stating in pertinent part as follows:

> "The facts in this case are in substantial agreement with those in the cited decisions except that the claimant herein did not

> resign from his employment rather than accept a reclassification, but forced the employer to discharge him. In our opinion this is a difference in form rather than in substance. The claimant could have continued in employment with the employer had he elected to accept a reclassification. He chose not to do so and therefore, he was the motivating force behind the severance of the employer-employee relationship (Benefit Decision No. 5421). In line with Benefit Decisions Nos. 5483 and 5512, we hold that the claimant voluntarily left his most recent work and is subject to disqualification for benefits under Section 58(a)(1) of the Act if he did so without good cause. . . ."

Accordingly, we conclude that, although as a matter of form the employer discharged this claimant, the claimant herein as a matter of actual fact voluntarily left his work when he refused to work on Sundays in accordance with the instructions of his employer.

In determining whether a worker leaves his work voluntarily without good cause, we have stated in Benefit Decisions Nos. 4752 and 6064:

> ". . . It is our opinion that the legislative declaration of public policy . . . requires that we find that good cause for quitting work exists only in those cases where the reasons for quitting are of a compelling nature."

As we stated in Benefit Decision 5054, the claimant's desire to be with her family on Sunday "was no more than a personal preference without any compelling circumstances . . ." Accordingly, we conclude that the refusal of the claimant herein to work on Sundays as required by the employer was for noncompelling reasons and that he therefore left his work without good cause under Section 1256 of the code and as that term is also to be construed under Section 1030 of the code.

DECISION

The decision of the referee is reversed. The claimant is disqualified for benefits under Section 1256 of the code for a five-week period as prescribed in Section 1260 of the code. Any benefits paid to the claimant which are based on wages earned from the employer on or prior to December 31, 1954 shall not be chargeable under Section 1032 of the code to Employer Account No

Sacramento, California, October 21, 1955.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6372 is hereby designated as Precedent Decision No. P-B-209.

Sacramento, California, February 3, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT